

ARIZONA HOUSE OF REPRESENTATIVES
Fifty-second Legislature – First Regular Session

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11-17-15

COMMITTEE ON MODERNIZING THE 20-DAY NOTICE PROCESS

Report of Interim Committee
Thursday, November 12, 2015
House Hearing Room 1 -- 1 P.M.

Summary

Convened 1:01 P.M.

Recessed

Reconvened

Adjourned 2:23 P.M.

Members Present

Representative Diego Espinoza
Representative Warren Petersen
Mr. Michael Holden
Mr. Spencer Kamps
Mr. David Martin
Mr. Matt Sager
Representative Karen Fann, Chairman

Members Absent

Mr. David Godlewski

Agenda

Original Agenda – Attachment 1

Request to Speak

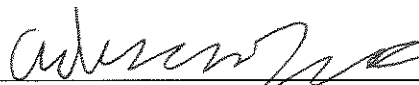
Report – Attachment 2

Presentations

<u>Name</u>	<u>Organization</u>	<u>Attachments (Handouts)</u>
Michael Holden	Overview of the 20-Day Notice Process	3
Mike Hans	Review of Notice Processes in Other States	4

Committee Action

<u>Bill</u>	<u>Action</u>	<u>Vote</u>	<u>Attachments (Summaries, Amendments, Attendance)</u>
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Adrian Luth, Chairman Assistant
November 17, 2015

(Original attachments on file in the Office of the Chief Clerk; video archives available at <http://www.azleg.gov>)

COMV: 11:01 P.M.
ADJ: 12:23 P.M.

Interim agendas can be obtained via the Internet at <http://www.azleg.state.az.us/InterimCommittees.asp>

ARIZONA HOUSE OF REPRESENTATIVES

INTERIM MEETING NOTICE OPEN TO THE PUBLIC

HOUSE AD HOC COMMITTEE ON MODERNIZING THE 20-DAY NOTICE PROCESS

Date: Thursday, November 12, 2015

Time: 1:00 P.M.

Place: HHR 1

AGENDA

1. Call to Order
2. Introduction of Committee Members
3. Review of Committee Members
4. Overview of the 20-Day Notice Process
5. Review of Notice Processes in Other States
6. Committee Discussion
7. Public Testimony
8. Announcements
9. Adjourn

Members:

Representative Karen Fann, Chair
Representative Diego Espinoza
Representative Warren Petersen
David Godlewski

Michael Holden
Spencer Kamps
David Martin
Matt Sager

11/4/15
JY

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ARIZONA STATE HOUSE OF REPRESENTATIVES

Fifty-second Legislature - First Regular Session

MODERNIZING THE 20-DAY NOTICE PROCESS

Report of Interim Committee

Thursday, November 12, 2015

House Hearing Room 1

REQUEST TO SPEAK

[illegible]

(Original attachments on file in the Office of the Chief Clerk; video archives available at <http://www.azleg.gov>)

Attachment # 2
COMMITTEE ON MODERNIZING THE 20-DAY NOTICE PROCESS
Thursday, November 12, 2015

Attachment 2

PLEASE COMPLETE THIS FORM FOR THE PUBLIC RECORD



HOUSE OF REPRESENTATIVES

Please PRINT Clearly

Committee on _____ Bill Number _____
Date Nov 12, 2015 ☐ Support ☐ Oppose ☒ Neutral
Name Jill Smith Need to Speak? ☐ Yes ☐ No
Representing Titan Lien Services Are you a registered lobbyist? _____
Complete Address P.O. Box 50058 Mesa AZ 85208
E-mail Address jill@titanlien.com Phone Number 480 380 3434
Comments: _____

FIVE-MINUTE SPEAKING LIMIT

PLEASE COMPLETE THIS FORM FOR THE PUBLIC RECORD



HOUSE OF REPRESENTATIVES

Please PRINT Clearly

Committee on Ad hoc comm. Modernization Tech Infrastructure Bill Number _____
Date 11/12/15 ☐ Support ☐ Oppose ☒ Neutral
Name Rob Dalager Need to Speak? ☒ Yes ☐ No
Representing NIC Are you a registered lobbyist? Y
Complete Address 322 W Roosevelt St, Phoenix, AZ
E-mail Address rob@p3gr@com Phone Number 602-909-4576
Comments: _____

FIVE-MINUTE SPEAKING LIMIT

ARIZONA PRELIMINARY 20-DAY NOTICE: AN OVERVIEW

Michael J. Holden
Holden Willits PLC
(602) 508-6220
mholden@holdenwillits.com

1. Purpose and Effect of Preliminary 20-Day Notice

The preliminary 20-day notice serves one primary purpose. It alerts the owner, lender and other up-chain parties that a contractor, subcontractor or supplier is furnishing labor or material on a particular project and that the entity sending the preliminary 20-day notice is preserving its right to later record a mechanic's and materialman's lien if full payment is not received.

By sending the preliminary 20-day notice, the contractor, subcontractor or supplier is simply preserving its right at some future date to record a lien on the project if it is not paid. In other words, the sending of a preliminary 20-day notice is a statutorily required precondition or prerequisite to later recording a lien against the project. However, the contractor, subcontractor or material supplier must take additional affirmative action after sending the preliminary 20-day notice to create a lien or encumbrance against the owner's property.

Sending a preliminary 20-day notice alone does not create any legal rights. A.R.S. § 33-992.01(B) ("a written preliminary twenty day notice" is a "necessary prerequisite to the validity of any claim of lien").

2. Who Must Provide a Preliminary 20-Day Notice?

To be entitled to record a lien, all persons (other than those performing actual labor for wages) must give a written preliminary 20-day notice to the owner, the general contractor, the construction lender, and the person with whom the claimant has contracted with. The preliminary notice must substantially follow a statutory form.

3. What Information Must Be Included in a Preliminary 20-Day Notice?

The preliminary 20-day notice must "follow substantially" the form set forth in the statute. A copy of the statutory form is attached. A.R.S. § 33-992.01(D). The statute expressly requires that the preliminary 20-day notice include the following information:

- A general description of the labor, professional services, materials, machinery, fixtures or tools furnished or to be furnished.
- An estimate of the total price of the labor, professional services, materials, machinery, fixtures or tools furnished or to be furnished.

- The name and address of the person furnishing labor, professional services, materials, machinery, fixtures or tools.
- The name of the person who contracted for the purchase of labor, professional services, materials, machinery, fixtures or tools.
- A legal description, subdivision plat, street address, location with respect to commonly known roads or other landmarks in the area or any other description of the jobsite sufficient for identification.
- A statutorily-mandated warning “in bold-faced type.”

A.R.S. § 33-992.01(C).

4. Timing Requirement for Giving Notice

The preliminary 20-day notice is generally given within 20 days of the first day that the contractor, subcontractor or supplier furnishes labor or material to a project. A.R.S. § 33-992.01(C). Failure to meet this deadline is harmful but not necessarily fatal to a lien claim. If the preliminary notice is given later than 20 days after the lien claimant first furnished labor, materials or professional services, a lien may be claimed, but only for the labor, materials or professional services furnished within 20 days prior to the date the preliminary notice was given and thereafter. The claimant’s lien rights are lost for any labor, materials or professional services furnished earlier than 20 days before the preliminary notice is given. A.R.S. § 33-992.01(E).

5. Mailing Requirements for Preliminary 20-Day Notice Form

All preliminary notices must be given either (a) by first class mail with a certificate of mailing, (b) by registered mail, or (c) by certified mail. The notice must be sent postage prepaid and should be addressed to the person to whom notice is to be given at his residence or business address. A preliminary notice may not be personally served. Service is complete at the time of the deposit in the mail. A.R.S. § 33-992.01(F).

6. Amending the Preliminary 20-Day Notice Form

A second preliminary notice must be given when the estimated price for the labor, professional services, materials, machinery, fixtures or tools exceeds by 20 percent or more the total price set forth in any prior preliminary notice. A.R.S. § 33-992.01(G).

7. Obligation of Owner or Other Interested Party to Provide Corrected Information

Within ten days after receipt of a preliminary notice, the “owner or other interested party” is required to furnish the claimant with information of the following:

1. The legal description, street address or other description of the jobsite sufficient for identification.
2. The name and address of the owner or reputed owner.
3. The name and address of the prime contractor or reputed contractor.
4. The name and address of the construction lender, if any, or the reputed construction lender.

A.R.S. § 33-992.01(I). In addition, if a payment bond in lieu of lien rights has been recorded pursuant to A.R.S. §33-1003, the owner or “other interested party” must provide the claimant with a copy of the bond and the name and address of the surety company and bonding agent providing the payment bond. *Id.*

If the owner “or other interested party” fails to furnish this information, then the owner is prevented from raising as a defense to a subsequent lien claim any inaccuracies of such information in a preliminary notice, provided the notice otherwise complies with the statutory requirements. A.R.S. § 33-992.01(J). If the correct information is received by the claimant after the claimant has given the preliminary notice and the notice is inaccurate, the claimant has until 30 days after receipt of the information to amend the notice. *Id.*

8. Impact of Defects or Mistakes

Defects in the information included or excluded on a preliminary notice or the failure to give the notice to the proper parties may subsequently invalidate an unpaid subcontractor’s or supplier’s mechanic’s and materialman’s lien.

Arizona Preliminary Twenty Day Lien Notice

In accordance with Arizona Revised Statutes section 33-992.01, this is not a lien. This is not a reflection on the integrity of any contractor or subcontractor.

The name and address of the Owner or Reputed Owner are:

This preliminary lien notice has been completed by (name and address of claimant):

Date:

The name and address of the Original Contractor are:

You are hereby notified that the claimant has furnished or will furnish labor, professional services, material, machinery, fixtures or tools of the following general description:

The name and address of any lender or reputed lender and/or assigns are:

In the construction, alteration or repair of the building, structure or improvement located at:

The name and address of the person with whom the claimant contracted is:

And situated upon that certain lot(s) or parcel(s) of land in _____ County, Arizona, described as follows:

An estimate of the total price of the labor, professional services, materials, machinery, fixtures or tools furnished or to be furnished is:
\$ _____

Notice to Property Owner

If bills are not paid in full for the labor, professional services, materials, machinery, fixtures or tools furnished, or to be furnished, a mechanic's lien leading to the loss, through court foreclosure proceedings, of all or part of your property being improved may be placed against the property. You may wish to protect yourself against this consequence by either:

1. Requiring your contractor to furnish a conditional waiver and release pursuant to Arizona Revised Statutes section 33-1008, subsection D, paragraphs 1 and 3 signed by the person or firm giving you this notice before you make payment to your contractor.

2. Requiring your contractor to furnish an unconditional waiver and release pursuant to Arizona Revised Statutes section 33-1008, subsection D, paragraphs 2 and 4 signed by the person or firm giving you this notice after you make payment to your contractor.

3. Using any other method or device that is appropriate under the circumstances.

(The following language shall be in type at least as large as the largest type otherwise on the document.)

Within ten days of the receipt of this preliminary twenty day notice the owner or other interested party is required to furnish all information necessary to correct any inaccuracies in the notice pursuant to Arizona Revised Statutes section 33-992.01, subsection I or lose as a defense any inaccuracy of that information.

Within ten days of the receipt of this preliminary twenty day notice if any payment bond has been recorded in compliance with Arizona Revised Statutes section 33-1003, the owner must provide a copy of the payment bond including the name and address of the surety company and bonding agent providing the payment bond to the person who has given the preliminary twenty day notice. In the event that the owner or other interested party fails to provide the bond information within that ten day period, the claimant shall retain lien rights to the extent precluded or prejudiced from asserting a claim against the bond as a result of not timely receiving the bond information.

Dated: _____
(Company name)

By: _____
(Signature)

(Title)

Upon receipt of this notice, please detach and sign this Acknowledgement and return to Claimant listed above

Acknowledgment of Receipt of Preliminary Twenty Day Notice

This acknowledges receipt on _____ of a copy of the preliminary twenty day notice at
(insert date)

_____. Date: _____
(insert address) (date this acknowledgment is executed)

Signature of person acknowledging receipt, with
title if acknowledgment is made on behalf of another
person

Notice Process in Other States

BY:
MIKE HANS
ASSISTANT ANALYST
HOUSE RESEARCH STAFF

Process in Other States

- **Utah** – State Construction Registry
Department of Commerce
- **Iowa** – State Construction Registry
Secretary of State
- **North Carolina** – Lien Agent
- **Virginia** – Lien Agent

Utah State Construction Registry

- Utah Code establishes the State Construction Registry (Registry)
- Operated by 3rd party vender (Designated Agent)
- Overseen by *Division of Occupational and Professional Licensing* within the Department of Commerce

Utah State Construction Registry

- Task of the Registry
 - Provide a central repository for required notices
 - Allow for filing/reviewing notices
 - Permit electronic filing and transmitting notices
 - Accommodate filing by alternative means
 - Provide electronic and physical forms of notification
- Licensing Rules require certain standards and functions for the Registry

Registry Requirements

- The Registry must meet or exceed standards of entry
 - Not liable for incorrect information entered by a third party
 - The Registry is classified as a public record
 - All records must be able to be filed, accessed, and tracked online
- Fees may not be unreasonable
- Information and notices can be added either online or by mailing to the Department of Commerce

Required Notices

- *Preconstruction Service Providers* must file a notice with the Registry
 - *Construction Service Providers* must file a preliminary notice with the Registry
- Both notices must be filed within 20 days of beginning services

Iowa State Construction Registry

- Statute creates a *Mechanics Notice and Lien Registry*
 - Administered by the Secretary of State
- Notices can be posted to the Registry or sent to the Secretary of State for posting
 - The Secretary of State has 3 days after receipt to post
- The Registry is searchable by several indexes
- The Secretary of State may charge and collect fees necessary for administration and maintenance

Required Notices

- General contractors must:
 - Give the owner notice of all subcontractor's rights to lien
 - Post a notice of commencement within 10 days of beginning service
- Subcontractors and suppliers must:
 - Post a preliminary notice prior to the general contractor receiving full payment

North Carolina Lien Agents

- Owners must designate a Lien Agent
 - Exceptions: additions and improvements to single-family dwellings and any projects less than \$30,000
- Lien Agents must be a title company or title insurance agency
- The Lien Agent's information must be:
 - Given to the Department of Insurance
 - Posted in the building permit and on the property
 - Provided to all suppliers, subcontractors and anyone else who requests it

Required Notices



- Contractors and subcontractors must post a *Notice to Lien Agent* within 15 days of beginning project
- The Lien Agent has 3 days to send notice confirming receipt
- The Lien Agent must also provide notice of all potential lien claimants if requested by the owner, title insurance company, contracted purchaser, potential lien claimants, or closing attorney.

Virginia Lien Agents



- A homeowner may appoint a Lien Agent on one or two-family residential construction projects
- The Lien Agent must be a licensed attorney, a title insurance company, or financial institution.
- Duties of the Lien Agent
 - To receive and provide notice of lien claimants
 - To enter into written agreements to disperse funds

Required Notices



- The Lien Agent's information must be in the building permit
- General contractors, subcontractors, and those performing or furnishing labor must give notice of any potential lien claimants
- All memoranda or notices of liens must be recorded in the deed books at the county clerk's office and must be indexed in the general index of deeds

State	Where is Notice Posted/Sent?	Type of Notice	For Whom?	When?	Required?
Utah	State Construction Registry (Department of Commerce)	Preconstruction Service	Those furnishing preconstruction services	20 days after commencement of service	Yes
		Preliminary Notice	Contractors, subcontractors and suppliers	20 days after commencement of service	Yes
		Notice of Completion	Contractor, owner, lender, surety, or title company	After issuance of a certificate of occupancy	No
Iowa	State Construction Registry (Secretary of State)	Notice of Commencement	General contractors or owner-builders using a subcontractor	10 days after commencement of work	Yes
		Preliminary Notice	Subcontracts & suppliers	Before general contractor receives full payment	Yes
North Carolina	Lien Agent	Notice to Lien Agent	Potential lien claimant	15 days after first furnishing labor or materials	Yes
Virginia	Lien Agent	Notice to Lien Agent	Any contractor supplying labor or materials	30 days after commencement of work	Yes